

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ASCENTIUM CAPITAL LLC,

Plaintiff,

CASE NO. _____

v.

JULIO F. GALLO,

Defendant.

_____ /

COMPLAINT

Plaintiff, Ascentium Capital LLC, (“Ascentium”), by and through its undersigned counsel, hereby sues Defendant, Julio F. Gallo (“Gallo”), and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Ascentium is a Delaware limited liability company with a principal place of business in Texas.

2. Ascentium is wholly owned by RF Ascentium, LLC, and RF Ascentium, LLC in turn is wholly owned by Regions Bank. Regions Bank is an Alabama corporation with its principal place of business in Birmingham, Alabama. Accordingly, Ascentium is a citizen of the State of Alabama.

3. Gallo is an individual and a medical doctor resident in Miami-Dade County in the State of Florida, and he is also domiciled in the State of Florida. Accordingly, Gallo is a citizen of the State of Florida.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because Ascentium and Gallo are citizens of different states and the amount in controversy exceeds \$75,000.

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Florida and because Gallo resides in Miami-Dade County which falls within the Southern District of Florida.

6. All conditions precedent to the bringing of this action have been satisfied, waived, or otherwise performed.

CONTRACT AND GUARANTY

7. In or about October 2014, Nu Institute for Age Management and Intervention, LLC (“Nu Institute”) entered into Equipment Finance Agreement No. 2142126 (“Agreement”) with Ascentium whereby Ascentium agreed to finance Nu Institute’s acquisition of commercial equipment (“Equipment”), from a vendor selected by Nu Institute.

8. Nu Institute is an inactive Florida limited liability company of which Gallo was previously a manager.

9. Pursuant to the terms and conditions of the Agreement, Nu Institute agreed to make 6 monthly payments of \$29.00 plus applicable taxes, followed by 60 monthly payments of \$2,839.42 plus applicable taxes to Ascentium.

10. In addition, Nu Institute granted Ascentium a security interest in the Equipment and all proceeds therefrom to secure Nu Institute’s obligations under the Agreement.

11. The Agreement contained a jury trial waiver.

12. In connection with the Agreement, Gallo executed a Continuing Guaranty (“Guaranty”) on the Agreement wherein he unconditionally guaranteed to Ascentium the prompt payment and performance when due of all the obligations of Nu Institute under the Agreement. The Guaranty provided:

CONTINUING GUARANTY: The undersigned (“you”, “your”, jointly and severally if more than one) unconditionally guarantees to Ascentium Capital LLC and its assigns (“Ascentium Capital”) the prompt payment and performance when due of all of the obligations of the Debtor under the Agreement referenced above and all related documents executed by the Debtor in connection with it (collectively with the Agreement, the “Agreements”). Ascentium Capital shall not be obligated to proceed against the Debtor, the property being financed under the Agreement or enforce any other remedy before proceeding against you to enforce this Continuing Guaranty (“Guaranty”). Notwithstanding any changes made to the Agreements in the course of Ascentium Capital’s dealings with the Debtor, this Guaranty will remain in effect with respect to the Agreements as so changed even if you are not notified of the changes and will remain in effect even if the Agreements or any of them are no longer enforceable against the Debtor. You waive all presentments, demand for performance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and all other notices to which you may have a right. You agree to pay Ascentium Capital all the expenses incurred by Ascentium Capital in enforcing this Guaranty. You may not assign the Guaranty without Ascentium Capital’s written consent. This Guaranty shall be governed by, construed, interpreted and enforced in accordance with the laws of the state of New Jersey without reference to its principles of conflicts of laws. You consent to the non-exclusive jurisdiction of the federal and state courts located in the state of New Jersey in any action to enforce this Guaranty and you waive any right to assert this is an inconvenient forum. You consent to Ascentium Capital conducting a credit evaluation of you from all sources, periodically updating it and sharing the results with others. This Guaranty may be executed in separate counterparts which together shall constitute one and the same instrument.

13. Ascentium paid the vendor for the Equipment and performed all other obligations which it was required to perform under the Agreement.

14. Nu Institute benefited from the Agreement and the Equipment financed by Ascentium as the Equipment was delivered and used for Nu Institute’s operations in Florida.

15. Thereafter, on or about October 10, 2017, the Agreement went into default for lack of payment.

16. As a result of Nu Institute’s default, Ascentium accelerated the balance due under the Agreement pursuant to the terms and conditions thereof.

17. The accelerated balance due under the Agreement is \$90,204.04 plus interest thereon at the contract rate of 16% per annum from October 10, 2017, the date of default.

18. Nu Institute did not pay the accelerated balance.

19. Despite Ascentium's demands for payment, no part of such accelerated balance has been paid by Gallo under the Guaranty.

COUNT I - BREACH OF GUARANTY

The allegations contained in paragraphs 1 through 16 are re-alleged herein as if set forth in their entirety.

20. Gallo executed the Guaranty on the Agreement wherein he unconditionally guaranteed to Ascentium the prompt payment and performance when due of all the obligations of Nu Institute under the Agreement.

21. Gallo breached the Guaranty by failing to pay to Ascentium the amounts due under the Agreement which Nu Institute failed to pay.

22. As a result of Dr. Gallo's breach of the Guaranty, Ascentium has suffered damages and is due the sum of \$90,204.04 plus attorney's fees, costs and interest at the contract rate of 16% per annum from October 10, 2017, the date of default.

WHEREFORE, Plaintiff, prays that this Honorable Court enter judgment in favor of Ascentium Capital LLC and against Julio F. Gallo for damages, award Ascentium Capital LLC its reasonable attorney's fees and costs incurred to enforce the Continuing Guaranty and to prosecute this action, pre-judgment and post-judgment interest, and such other and further relief as the Court may deem just and proper.

COUNT II – PROMISSORY ESTOPPEL

The allegations contained in paragraphs 1 through 20 are re-alleged herein as if set forth in their entirety.

23. Gallo promised to make payments to Ascentium pursuant to the terms of the Agreement and the Guaranty.

24. Ascentium reasonably relied and relied to its detriment upon Gallo's promise to guarantee and pay the amounts due under the Agreement.

25. As a result of Gallo's breach of his promise to pay, Ascentium has suffered damages totaling \$90,204.04 plus attorney's fees, costs and interest at the contract rate of 16% per annum from October 10, 2017, the date of default.

WHEREFORE, Plaintiff, prays that this Honorable Court enter judgment in favor of Ascentium Capital LLC and against Julio F. Gallo for damages, award Ascentium Capital LLC its reasonable attorney's fees and costs incurred to enforce the Continuing Guaranty and to prosecute this action, pre-judgment and post-judgment interest, and such other and further relief as the Court may deem just and proper.

This April 26, 2022.

Respectfully submitted,

By: /s/ Desislava K. Docheva
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